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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

In Re: Patrick James Knowlton, *Petitioner*

PETITION FOR WRIT OF MANDAMUS

John H. Clarke
Counsel of Record
1730 K Street, NW
Suite 304
Washington, DC 20006
(202) 332-3030

1. FORWARD

A. Questions presented

1. As a matter of law, does the OIC's grand jury's investigative jurisdiction into the probe into Mr. Foster's death remain open until the OIC files its "final report" under the Ethics in Government Act?

2. Has Knowlton made a *prima facie* case of the government's participation in an illegal conspiracy to obstruct justice in its probe into the death of deputy White House counsel Vincent W. Foster, including abuse of the grand jury process by:

   (a) Withholding probative testimony taken before a previous panel operating under the same limited prosecutorial jurisdiction?

   (b) Causing Knowlton to suffer grand jury witness tampering and civil rights violations triggered by, and committed in furtherance of, the government's conspiracy to obstruct justice into its probes into Mr. Foster's death?

   (c) The government's ill-treatment of him before the panel, including asking him, *inter alia*, whether the man in Fort Marcy Park "touched" Knowlton's "genitals"?

   (d) Knowlton's 511-page critique of the Independent Counsel's Report on the Death of Vincent W. Foster, Jr.?

3. [REDACTION

]

B. Summary of the case

Plaintiff Whitewater grand jury witness Patrick Knowlton suffered witness tampering that began October 26, 1995, the very day that the FBI subpoenaed him to testify about the death of deputy White House Counsel Vincent Foster.

The Independent Counsel had prepared Knowlton's subpoena two days earlier – October 24, 1995 – the very day that the London Sunday Telegraph appeared in U.S. newsstands. In that Telegraph was an article about the OIC's Foster death probe that reported that Knowlton had said "his [1994 FBI] statements have been falsified," and that "the FBI told outright lie[s]" about what he had seen at Fort Marcy Park, 70 minutes before the police arrived at the crime scene. The article concluded, "Starr's investigators have never talked to Knowlton. The federal grand jury has never summoned him to give sworn testimony..."

C. Relief sought

[REDACTION

D. Parties

Patrick James Knowlton, *Petitioner*
2424 Pennsylvania Avenue, NW
Apartment 810
Washington, DC 20037

[REDACTED

]

[REDACTED

]

[REDACTED

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2. REDACTED

[REDACTED

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[REDACTED

]

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1 [REDACTED

]

3. JURISDICTION

A. Statutory provision

The statutory provision conferring on this Court Jurisdiction over this matter is under **28 U.S.C. § 1651.** *Writs:*

> (a) The Supreme Court and all courts established by Act of Congress may issue all write necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

B. Adequate relief cannot be obtained in any other form or from any other Court, and the Writ will be in aid of the Court's appellate jurisdiction

Petitioner seeks adjudication of this matter before [REDACTED

] Thus, intervention is required to prevent frustration or obstruction of later appellate review, as the Writ is necessary to control action that could not be controlled by awaiting entry of an appealable order in the United States Court of Appeals.[2] Additionally, this Court's adjudication of this matter would encompass a jurisdictional question, the answer to which may effect the rights of all persons named in the OIC's various interim "final" reports.

Petitioner sought [REDACTED

] Twelve of Petitioner's 13 exhibits are in the Appendix hereto.

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[2] [REDACTED

4. FACTS

By order of the Special Division for the Purpose of appointing Independent Counsels, Knowlton's 20-page submission was included in the Appendix to the Office of Independent Counsel's (OIC) Report on the Death of Vincent W. Foster ("OIC Appendix"). It was released to the press and public on October 10, 1997. That Appendix includes a summary of the underlying facts of this Petition, and is a part of the District Court record.[3] Excerpts from the OIC Appendix, and from Knowlton's October 21, 1998 verified Second Amended Complaint (also in the record below) follow.

OIC Appendix, pp. 1-2:

> **Facts.** While heading home in heavy traffic on the George Washington Memorial Parkway, and facing over a two hour commute, Patrick Knowlton pulled into Fort Marcy Park at 4:30 p.m. on July 20th, 1993, to relieve himself. Patrick parked close to the main footpath entrance into the park, between the only two cars in the small parking lot, which were parked just four spaces apart.
>
> To Patrick's left was parked an unoccupied mid-1980s rust-brown four-door Honda sedan with Arkansas tags (closest to the footpath entrance), and on his right was a late model metallic blue-gray sedan, backed into its parking space. A man was seated in the driver's seat of the blue-gray sedan. Immediately after Patrick parked, the man lowered the passenger side electric window and stared at him, menacingly. This unnerved Patrick as he exited his car.
>
> As he started from his car toward the footpath, Patrick heard the blue-gray sedan's door open. Apprehensive, Patrick walked to the sign bordering the footpath entrance to the park and feigned to read its historical information while nonchalantly glancing to his right to see if the man was approaching. He saw the man leaning on the roof of the

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[3] APNDX 1 at 5.

driver's side of his blue-gray sedan, watching him intently. Patrick then cautiously proceeded 75 feet down the footpath's left fork to the first large tree, in the opposite direction from which Mr. Foster's body was later recovered.

As he relieved himself, Patrick heard the man close his car door. Because the foliage was dense, he couldn't see the parking lot and hoped the man wasn't approaching. As Patrick walked back to the parking lot with a heightened sense of awareness, he scanned the lot but did not see the man. Patrick surmised that the man had either gotten back in his car or perhaps could even be crouching between the brown Honda and Patrick's car preparing to attack him.

In order to maintain his distance from the space between the two cars until he learned the man's whereabouts, Patrick walked directly toward the driver's side door of the brown Honda, and then around the back of it. As Patrick reached the driver's side door of the brown Honda, he looked through the window. He also looked into the back seat as he walked the length of the car. He saw a dark colored suit jacket draped over the driver's seat, a briefcase on the front passenger's seat, and two bottles of wine cooler on the back seat. As he reached the back of the Honda, Patrick was relieved to see that the man had returned to his own vehicle. The man was still staring fixedly at him.

Of the five things Patrick witnessed at the park ((1) the man and his car, (2) the suit jacket, (3) the briefcase, (4) the wine cooler, and (5) the mid-1980s Arkansas brown Honda), the Honda itself is the most relevant. It was not Mr. Foster's car. When Mr. Foster's body was discovered approximately 70 minutes after Patrick had left the park, Mr. Foster had been dead for well over 70 minutes...

Amended Complaint:

101. On October 13, 1995... plaintiff realized for the first time that Monroe had falsified his account...

102. On October 22, 1995, a newspaper article entitled "Death in the Park: Is this the killer?" appeared in the *London Sunday Telegraph*... The article reported...

> When the *Sunday Telegraph* showed him police... summaries of his testimony – which he had not seen... saying his statements have been falsified... "That's an outright lie," he said, angrily... "They went over it about 20 times... telling me that this was Foster's car," said Knowlton. "But I was quite adamant about it. I saw what I saw, and I wasn't going to change my Story"... Starr's investigators have never talked to Knowlton. The federal grand jury has never summoned him to give sworn testimony...

103. Two days later, on Tuesday, **October 24, 1995**:

(1) The October 22, 1995 issue of the *London Sunday Telegraph*, containing the foregoing article, appeared on American newsstands;

(2) The Office of Independent Counsel under Kenneth Starr prepared a subpoena for Plaintiff to testify before the Whitewater grand jury; and

(3) That subpoena was delivered to FBI agent Russell T. BRANSFORD for service on Plaintiff.

104. Two days after that, on **Thursday, October 26, 1995**, BRANSFORD served the subpoena on Plaintiff to appear and testify before the Washington, DC, Whitewater grand jury...[4]

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[4] APNDX 1 at 66-68.

Exhibit 2 of 5 the court-ordered OIC Appendix encapsulates the grand jury witness tampering that Petitioner suffered.

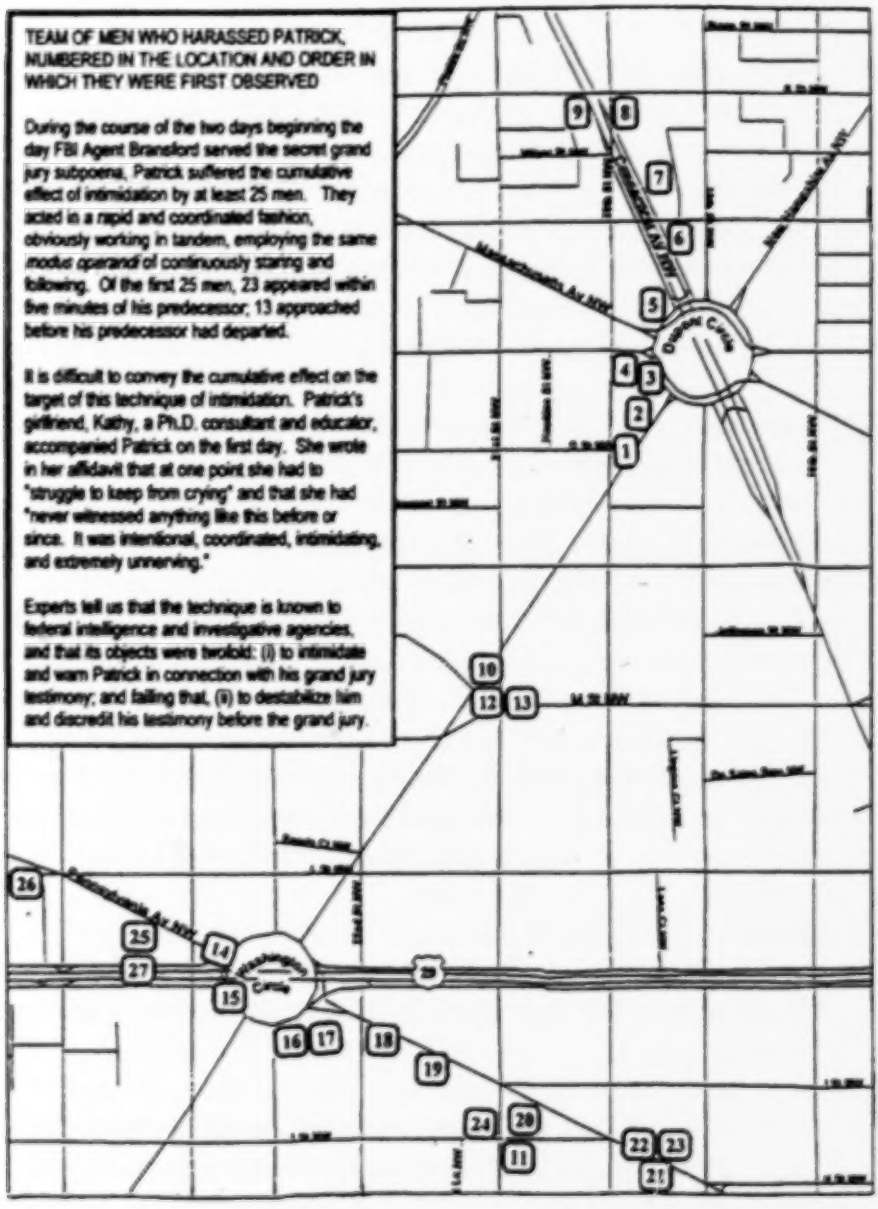


EXHIBIT 2

Thus, Petitioner Whitewater grand jury witness Patrick Knowlton suffered witness tampering[5] and civil rights violations[6] beginning on October 26, 1995, the very day that the FBI served him with the secret grand jury subpoena to testify about the death of deputy White House Counsel Vincent Foster.[7]

Since his November 1, 1995 testimony, Knowlton has built a case around the proposition that this civil rights violation was a subsidiary conspiracy to a larger ongoing conspiracy to obstruct justice in federal probes into Mr. Foster's death. In June 1999, Knowlton completed his written analysis and filed it in the Special Division of the US Court of Appeals; a comparison of the OIC's September 1997 Report on the matter to over 10,000 pages of federal investigative records. Knowlton's evidence is irrefutable.

In the District of Colombia Courts, Knowlton has sought redress [REDACTED]:

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[5] **18 U.S.C. § 1512:**

* * *

(c) Whoever intentionally harasses another person and hinders, delays, prevents, or dissuades any person from – * * *

(4) causing a criminal prosecution... to be sought or instituted, or assisting in such prosecution or proceeding; or attempts to do so shall be fined under this title or imprisoned...

[6] **42 U.S.C. § 1985 (2) Conspiracy to interfere with civil rights (2) Obstructing justice; intimidating party, witness, or juror** – [in part]: If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully...

[7] Second Amend. Comp. ¶¶ 106-150, 171-172; APDX 1 at 69-77, 83-84. And see: Affidavit of Kathryn Kaplan, October 26, 1995, APNDX 1 at 99: "At one point, I became so panic-stricken that I had to struggle to keep from crying. I have never witnessed anything like this before or since. It was intentional, coordinated, intimidating, and extremely unnerving." Affidavit of Christopher Ruddy, APNDX 1 at 102: " On Friday, October 7, 1995, as events unfolded, I believed the actions of the men identified in paragraphs 54 through 73 were an obvious attempt to intimidate, and I still believe so today."

- A civil rights suit, CA 96-2467,[8] for violation of 42 USC 1985 (2) (Petition for Certiorari filed herewith);
- Sought relief under the Ethics in Government Act with the Special Division of the US Court of Appeals – and sought an order for the presentation of certain evidence to the grand jury[9] (and served 25 copies[10]).
- [REDACTED

]

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[8] Knowlton v. United States et al., CA 96-2467: September 9, 1999 Order (1) Denying plaintiff's October 1998 motion for leave to amend complaint (2) Granting defendants' motions for summary judgment; November 29, 1999 Memorandum Order denying plaintiff's Rule 59(e) motion to alter judgment, APNDX 1 at 128-131. Knowlton v. Alouri, et al., USCA No. 99-5433 June 27, 2000 Order granting appellees' summary affirmance; September 13, 2000; Order denying appellant's petition for hearing and petition for hearing *en banc*, APNDX 1 at 132-134.

[9] September 26, 1997 Order granting motion for inclusion of Knowlton's 20-page submission in the OIC's Appendix to its Report on the Death of Vincent W. Foster. Jr; September 30, 1997 Order denying OIC's motion to reconsider the Order for inclusion of Knowlton's submission in the OIC's Appendix to the OIC's Report on the Death, APNDX 1 at 128-122-123. September 14, 1999 Order dismissing for lack of jurisdiction, *inter alia*, To present evidence to the grand jury and Order unsealing of "Motions and all documents filed therewith, as well as the 'Notice of Service and Filing' filed on August 30," APNDX 1 at 124-125.

[10] August 30, 1999, Notice of Service of Filing filed in the Special Division of the US Court of Appeals (in entirety):

> On June 23, 1999, Patrick Knowlton moved this Court to, inter alia, present to the grand jury certain evidence of a conspiracy to obstruct justice in connection with the OIC's investigation into the death of Vincent W. Foster, Jr.
>
> To facilitate the relief sought, Patrick Knowlton serves the OIC 25 double-sided copies of his proposed amended Appendix, together with its exhibits, copies of which are filed herewith, and asks that the Independent Counsel retain these documents until the case is concluded and any appeal has been decided.

In Virginia, Knowlton:

- [REDACTED

]11

And Knowlton has also sought relief from the Congress and the press.12

5. ARGUMENT

Having failed to obtain relief from Constitutional branches of his government, Knowlton .

The failure of our Constitution to function as intended in this matter involves fundamental rights and questions vital to the nation's public policy.

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11 [REDACTED

]

12 See APNDX 2 at 520, Endnote 33 Correspondence with Congress:

- June 19, 1996 personalized letter, hand delivered to all 535 members of Congress, envelope marked "Member's personal attention" -- all seven responses follow.
- July 16, 1996 personalized letter, hand delivered to 84 members of Congress – those members of committees having jurisdiction over the matter, envelope marked "Member's Personal Attention." No response.
- November 16, 1998 personalized letter, hand delivered to all members of the House Judiciary Committee on the eve of Mr. Starr's testimony regarding the impeachment of the President. No response.

See also , APNDX 2 at 531, Endnote 33 The media:

- Reporters provided March, 1996, Report of Witness Tampering;
- Media accounts of the October, 1997, release of the OIC's Report on Mr. Foster's death, mentioning Patrick Knowlton's name but failing to report the existence of his Court-ordered Appendix;
- Some responses from journalists when asked by the authors whether they are interested;
- Published attacks on Patrick Knowlton's mental stability;
- W. Barret, *Freedom to Steal, Why Politicians Never go to Jail*, New York Magazine, February 4, 1980; &
- *Now You Know...*, Wash. Post June 22, 1998.

A. [REDACTED

]

The Act demonstrates congressional intent to treat the OIC's prosecutorial jurisdiction as a single jurisdiction -- limited in scope and terminating upon the filing of its single, final, report. This limited jurisdiction continues to the present day. [REDACTED

]

(1) The OIC's practice of filing interim reports – unknown under the Act – is irrelevant on the issue of its [REDACTED]

The OIC claims to have filed its July 15, 1997 on Mr. Foster's death report in accordance with 28 U.S.C. § 594(h).[13] However, § 594(h) recognizes only a "final" report describing its work "fully and completely." See § 594(h)(1)(B) & (h)(2).[14] The

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[13] See Report on the Death of Vincent W. Foster, Jr. at 1: "In accordance with 28 U.S.C. § 594(h), the Office of Independent Counsel In re: Madison Guaranty Savings & Loan Association (the OIC) files this summary report on the 1993 death of Deputy White House Counsel Vincent W. Foster, Jr."

[14] **§ 594(h) Reports by independent counsel –**
(1) Required reports -An independent counsel shall***
(B) before the termination of the independent counsel's office under section 596(b), file a final report...
(2) Disclosure of information in reports - ***
[C]omments and factual information... may... be included as an appendix to such final report.

Act contemplates no "interim" reports. § 596(b)(1) too refers to this single final report "before termination."[15] (See generally, In re Sealed Motion, 880 F.2d 1367 (D.C. Cir. 1989), discussing § 594(h)(2) "final" report.) The OIC is bound by the Act as written. It cannot rightfully plead that its having filed interim reports, unknown under the Act, evidences [REDACTED]

Congress omitted the term "final" in section 594(h)(1), which requires the independent counsel to file with the court every six months "a report which identifies and explains major expenses."[16] "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Rusello v. United States, 464 U.S. 16, 23 (1983), quoted in Field v. Mans, 116 S. Ct. 437, 442 (1995).

Congress reenacted the Act in 1994, subsequent to the Special Division's decisions in In re Sealed Motion, 880 F.2d 1367 (D.C. Cir. 1989) and In re North, 10 F. 3rd 831, 835 (D.C. Cir. 1993), interpreting parties' rights under § 594(h)(2) upon the filing of a "final" Report. Congress reenacted § 594(h)(2) without amendment. "When Congress reenacts language that has been given a consistent judicial construction, we often adhere to that construction in interpreting the reenacted statutory language." Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 114 S. Ct. 1439, 1452 (1994).

The Supreme Court recognizes "the cannon of construction that instructs that 'a legislature is presumed to have used no

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15 **28 U.S.C. § 596. Removal of independent counsel; termination of office**
§ 596(b) Termination of office –
(1) Termination by action of independent counsel. An office of Independent counsel shall terminate when –
(B) the independent counsel files a final report...

16 **§ 594 (h) Reports by independent counsel –**
(1) Required reports -- An independent counsel shall--
(A) file with the division of the court... each 6-month period... a report which explains major expenses, and summarizes all other expenses...

superfluous words.'" Bailey v. United States, 116 S. Ct. 501, 507 (1995), quoting Platt v. Union Pacific R.R. Co., 99 U.S. 48, 58 (1879). The Supreme Court has "stated time and time again that courts must presume that a legislature says in a statute what it means and means what it says.'" Department of Defense v. FLRA, 114 S. Ct. 1006, 1014 (1994), quoting Connecticut Nat'l Bank v. Germain, 112 S. Ct. 1146, 1149 (1992). 'The ultimate question is one of congressional intent, not one of whether this Court thinks it can improve upon the statutory scheme that Congress enacted into law.'" United States v. Mezzanatto, 115 S. Ct. 797, 808 (1995) (Souter, J. dissenting) (quoting Touche Ross & Co. v. Redington, 442 U.S. 560, 578 (1979)).[17] By analogy, the OIC's grand jury would not exceed its jurisdiction today if it issued an indictment in the matter of Mr. Foster's death.

(2) OIC's jurisdiction is exclusive

The OIC's Foster death probe is exclusive in that the Act precludes the Department of Justice from investigating matters under OIC jurisdiction.[18]

(3) OIC's jurisdiction is limited in scope

The scope of OIC's investigative and prosecutorial jurisdiction is limited to the orders of the U.S. Court of Appeals, Special Division,[19] and to those matters that may arise out of that limited jurisdiction.[20]

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17 See also Fogerty v. Fantasy, Inc., 114 S. Ct. 1023, 1033 (1994) (Thomas, J. dissenting), quoting Pavlic & Le Flore v. Marvel Entertainment Group, 493 U.S. 120, 126 (1989) ("Our task is to apply the text, not to improve upon it.").

18 **28 U.S.C. § 597: Relationship with Department of Justice–**
(a) Suspension of other investigations and proceedings – Whenever a matter is in the prosecutorial jurisdiction of an independent counsel... Department of Justice shall suspend...

19 **28 U.S.C. § 594. Authority and duties of independent counsel – (e) Referral of other matters to an independent counsel –**

20 See **28. U.S.C. § 593 (b)(3): Scope of prosecutorial jurisdiction** ...including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

(4) OIC's present day jurisdiction is of limited duration

Congress also provided that the tenure of this limited jurisdiction terminates upon the conclusion of *"all matters"* under § 596(b)(1)(A)[21] upon the OIC's filing of its "final report" under § 594(h)(1)(B).[22]

B. The Court should review this matter *de novo*

The *de novo* standard of review of the evidence applies to failure to state a claim[23] and orders granting summary judgment.[24] This is such a case. The district court had a range of choices, and its decision could stand had it stayed within its range. But it erred procedurally by its summary adjudication. Given Petitioner's evidence, summary adjudication was error and the Court's review should be *de novo.*

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21 **28 U.S.C. § 596. Removal of independent counsel; termination of office**

§ 596(b) Termination of office --

(1) Termination by action of independent counsel. An office of independent counsel shall terminate when --

(A) the independent counsel notifies the Attorney General that the investigation of *all matters* within the prosecutorial jurisdiction...

(B) the independent counsel files a final report in compliance with section 594(h)(1)(B) (emphasis supplied)

22 **§ 594(h) Reports by independent counsel --**

(1) Required reports -- An independent counsel shall

(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel... (emphasis supplied)

23 Springdale Education Ass'n v. Springdale School District, 133 F.3d 649, 651 (8th Cir. 1998); Andrews v. Ohio, 104 F.3d 803, 806 (6th Cir. 1997.)

24 Herman v. South Carolina Nat'l Bank, 149 F3d 1413, n. 8 (11th Cir. 1998); Florida Fuels, Inc. v. Citgo Petroleum Corp., 6 F.3d 330, 332, (5th Cir. 1993); Jones v. Union Pacific R.R., 968 F.2d 937, 940 (9th Cir. 1992).

"Decisions move from the substantial to the limited discretion of the trial court, or even become prescribed by a rule of law."[25] The district court's discretion may have been more open before In re Sealed Case No. 98-3077 151 F.3d 1059 (DC Cir. 1998), where the district court issued a show cause order why the OIC should not be held in contempt for alleged Rule 6(e) violations. The Court of Appeals reversed and remanded and stated the district court had a range of choices to discover the truth of the matter[26] (including the appointment of a master to report to the court). In our case [REDACTED

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C. Petitioner made a *prima facie* showing of exceptional circumstances [REDACTED]

(1) Petitioner was a grand jury target – illegally. The FBI and OIC illegally targeted Knowlton.

In October of 1995, 18 months after Knowlton's FBI interviews, and fifteen months after the reenactment of the Act and Mr. Starr's August 5, 1994 appointment, British journalist Ambrose Evans-Pritchard contacted Knowlton and showed him the FBI's reports summarizing its interviews with Knowlton. Evans-Pritchard published in the London *Sunday Telegraph* that the FBI 302s contained "outright lies," that the photograph of Mr. Foster's Honda was "a totally different car," that "[t]hey went over it about 20 times," but that Knowlton "wasn't going to change [his] story."

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25 Somerville, *Standards of Appellate Review*, 15 Litigation 23, 25 (Spring 1989).

26 We will now endeavor to set forth the contours of how a show cause hearing may proceed once a *prima facie* case has been established, recognizing that within these boundaries, the district court should have sufficient leeway to establish procedures it believes will assist it in best in discovering the truth of the matter while at the same time not causing undue interference with either the work of the grand jury or the court itself. Id. at 1073.

Evans-Pritchard's piece, Death in the Park: Is this the killer? subtitled, Foster mystery: a key witness ignored by the FBI reveals the face, also reported that "Starr's investigators have never talked to Knowlton. The federal grand jury has never summoned him to give sworn testimony..."

Two days later, the *Sunday Telegraph* was published in the United States, whereupon the OIC prepared Knowton's grand jury subpoena. Two days later, a Thursday, the OIC's FBI Agent Bransford served the secret subpoena, whereupon Petitioner suffered a cruel form of Witness Tampering. (Friday afternoon the OIC's deputy Independent Counsel -- who was present in the grand jury -- received actual notice of the ongoing campaign of intimidation.[27]) Neither the OIC nor the FBI responded to Petitioner's pleas for help until Monday, whereupon Bransford further intimidated Petitioner.[28] The inference of this intimidation coinciding with the secret nature of the grand jury subpoena is clear, particularly when combined with Petitioner's experts' affidavits that this *modus operandi* of intimidation is known to the government.[29]

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[27] Amended Comp. ¶ 155; APNDX 1 at 77.

[28] Amended Comp. ¶ 155-161; APNDX 1 at 79-80.

[29] Affidavit of Gene Wheaton, APNDX 1 at 103:

> I have over 20 years experience as state and federal investigator and over 40 years in the criminal justice system, including international police assistance counter terrorism, and security projects related to intelligence. I have qualified as an expert witness in both state and federal court. I have read Mr. Knowlton's report and the Amended Complaint, with interest, and sympathy for Mr. Knowlton... Intimidation is one purpose of a close, obvious surveillance... This case appears to be the misuse of surveillance techniques to scare and intimidate the witness or to destroy his credibility. This surveillance technique could be expected in the are of illegal intelligence operations... Many times it actually causes the target to develop long term or permanent emotional/mental problems. I have used this technique... Mr. Clarke has asked me to render an opinion on the following question: Was one of the purposes of actions described in the Amended Complaint to intimidate Mr. Knowlton to try to prevent him from testifying freely, fully and truthfully? In my opinion, provided the events reported in the Amended Complaint are accurately portrayed, my answer is yes.

(2) The OIC's abuse of the grand jury process included harassing questions and demeanor before the panel

Knowlton testified, as scheduled, at which time he was discredited before the grand jury.

Amended Complaint:

> 163. When Plaintiff testified on November 1, 1995, deputy Independent Counsel failed to introduced himself, sat behind Plaintiff and passed notes to the associate Independent Counsel, who questioned him while resting his head on his hand, as if Plaintiff's testimony was little more than an annoyance.
>
> 164. [A]sked... about what occurred at Fort Marcy Park and his prior statements to MONROE for about an hour... referr[ing] to MONROE's false statements in his reports of interviews with Plaintiff as "alleged misquotes," and referred to the overwhelming campaign of intimidation that Plaintiff had just suffered as the "alleged harassment."
>
> 165. During the balance of the time, associate Independent Counsel insinuated that Plaintiff was a liar, a homosexual, and a publicity hound...
>
> 166. ...[D]eputy Independent Counsel, seated behind Plaintiff, spoke for the first and only time, "We sent BRANSFORD."
>
> 167. Towards the end of his appearance before the grand jury, associate Independent Counsel asked Plaintiff to

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Affidavit of Ted L. Gunderson, , APNDX 1 at 105:

> I am a 28 year veteran of the FBI. Since my retirement in 1979 as Senior Special Agent in Charge of the FBI, Los Angeles Division, I have testified many times as an expert witness in both civil and criminal matters... Mr. Knowlton's allegations of harassment are well documented. That which is described is a technique that I am both aware of and knowledgeable about which his used by government agents and law enforcement officers. This technique is used for intimidation and to prevent a witness from testifying and/or testifying truthfully and/or cooperating with officials out of fear of harm to the witness or his loved ones... I have knowledge of this tactic and know of instances when it has been used.

step out of the room so that Counsel could ask the grand jurors whether they had any questions for Plaintiff. When Plaintiff returned, associate Independent Counsel asked Plaintiff, among other things, whether the suspicious acting man in the park talked to Plaintiff, passed him a note, confronted Plaintiff in any way or pointed a gun at Plaintiff. Counsel then asked Plaintiff a question that was coarse, insulting, injurious, hurtful, offensive, and outrageous. Plaintiff was appalled. Counsel then followed up by asking Plaintiff why he called the police and did not wait for the police to call him, and sarcastically if he came forward because he is a "good citizen" and a "good Samaritan."[30]

The question referred to in ¶ 167 of the Complaint is: "Did he touch your genitals?"[31] (The OIC denies it.[32])

(3) The OIC dismissed a panel, and withheld the history of the earlier panel, thus depriving the grand jury of any meaningful option to choose witnesses or review transcripts

Petitioner's materials prove the conspiracy. So does the 1994 to early 1995 grand jury testimony, upon information of a reliable source.[33] In the instant matter, the OIC appears to withhold

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30 APNDX 1 at 80-81.

31 Affidavit of Patrick Knowlton, APNDX 1 at 120; Affidavit of John H. Clarke, APNDX 1 at 121.

32 [REDACTED

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33 See Affidavit of Ambrose Evans-Pritchard, APNDX 1 at 114:
An individual or individuals who were in a position to have had firsthand knowledge told me:

For four months Rodriguez probed the case... Four of the rescue workers testified in secret before the Whitewater grand jury in the spring of 1995 that they saw trauma to the side of Foster's head or neck. Two of them,

probative testimony taken before a previous panel, operating under the same limited prosecutorial jurisdiction, for the purpose of hiding the existence of the conspiracy as well as the OIC's own participation in it.[34] A review of this matter should include a determination of whether this first panel was a "special grand jury" requiring majority vote to disband,[35] whether any such vote was taken -- and whether the OIC violates 18 U.S.C. § 3332, requiring it to "inform" a special panel of the crimes proved in Petitioner's materials.[36] The Act all but binds the OIC by Justice Department guidelines, which it ignored.

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including Arthur, described it as a gunshot wound... "When I was before the grand jury they showed me two Polaroids," I was told by a member of the Fairfax County rescue squad... "You could see blades of grass coming through the forefinger and the second finger in one, and another had grass between the second and third fingers..." [A]t the Whitewater grand jury in early 1995, was it people running away [near the body] or was it the flash of cars? "It was people," he answered... One Park Police officer ultimately broke ranks under cross-examination and testified that the crime scene had been tampered with after he arrived...

34 See Affidavit of Ambrose Evans-Pritchard, APNDX 1 at 114:
I have seen the photograph showing an apparent neck wound to Mr. Foster's neck... Wary of entrusting anything to the FBI crime labs, Rodriguez turned to the Smithsonian Institution for enhancement of the original... They revealed a dime-sized wound on the right side of Foster's neck (his left side) about halfway between the chin and the ear. It was marked by a black "stippled" ring -- a sort of dotted effect, like an engraving -- that was suggestive of a .22 caliber gunshot fired at point blank range into the flesh... An individual or individuals who were in a position to have had firsthand knowledge *told me*: "[A] year and a half later the same FBI agents were still there... In March of 1995 Rodriguez resigned... The grand jury was disbanded and sent home. It was replaced by a new jury with no knowledge of the peripatetic gun, or the missing photos, or wound in the neck."

35 **18 U.S.C. § 3331. Summoning and term:**
...The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed.

36 **18 U.S.C. § 3332. Powers and duties**
(a) ...Any such [government] attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation... APNDX 1 at 139.

(4) The foregoing was subsidiary to an overarching ongoing Justice Department conspiracy to cover up the facts of the Death: i & ii: Exhibits 12 & 13 – June 23 1999 filing; Exhibits 1 through 11

Exhibits 12 & 13 – June 23 1999 filing. As its proof, the June 1999 filing uses 184 exhibits, 179 of which are drawn from the publicly available federal investigative record.[37] These include reports of various kinds, testimony, depositions, FBI and Park Police witness interview reports, photographs, laboratory reports, investigators' memos, and handwritten notes. By comparison of every assertion in the OIC's 114-page Report on the Death to the underlying record, this filing exposes evidence of conspiracy on every assertion the Report makes. Every one.[38]

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[37] APNDX 2 at 120-123.

[38] See APNDX 2: The filing proves that the defendant concealed the existence of a bullet hole in Mr. Foster's neck (at 162-167), concealed that blood had drained from it (id. at 206-213), concealed the absence of the official wounds (id. at 168-184), as well as the fact that the blood's quantity was insufficient to support the conclusion that the official wounds in fact existed. Id. at 239-254. Polaroid photographs of the actual wounds vanished. (Id. at 133-151). The 35-mm film produced usable photographs, contrary to the official version. Id. at 151-157. The OIC concealed evidence of obstruction of justice during the course of the autopsy. Id. at 185-205. The filing proves the OIC's culpability in hiding that the gun recovered from Mr. Foster's hand was not the same as the first gun in his hand at the park (id. at 267-282), and it was not the same gun the FBI showed to the widow to identify. Id. at 286-288. In any event, it would have been impossible for Mr. Foster to have fired that weapon (id. at 255-262), and he owned neither it nor its ammunition. Id. at 282-295. And gunpowder issues are irreconcilable. Id. at 263-267. Crime scene tampering was not just with the gun. Body tampering at the park included actions designed to conceal the existence of the neck wound. Id. at 214-222. Defendant's excuse for the changing appearance of the blood at the park provides another example of its concealing the true state of the body when authorities arrived at the park. Id. at 223-238. All told, the filing proves crime scene tampering, by whom, and exposes the government's efforts to hide it. The government concealed when Mr. Foster left the White House compound on the day he died (id. at 56-60), the absence of his car (id. at 295-296 & 355-357) and its keys (id. at 358-377) at the park, as well as the existence of unidentified persons in the park. Id. at 389-390. The OIC hides the time of death (id. at 202, 297-303), when and by whom the body was first discovered (id. at 65-77), when the authorities arrived at the scene (id. at 77-119), as well as the notification of the FBI (id. at 124-128), police, firefighters (id. at 128-131), and White House personnel.

Exhibits 1 through 11. The balance of Petitioner's submitted evidence consists of Evans-Pritchard's affidavit regarding cover-up and grand jury abuse, Petitioner's and counsel's affidavits regarding grand jury abuse, affidavits of two witnesses to the witness tampering, a polygraph report, the opinions of two experts that Knowlton suffered witness tampering, the OIC Appendix and the October 1998 Amended Complaint, and the report of a Harvard-trained psychiatrist.[39] Cumulative review of the 13 exhibits proves a number of felonies.

Id. at 131-132. Changing accounts of forensic facts also reveals illegal government activity, including whether there was blood on the gun and eyeglasses (id. at 378-379), or dirt on the shoes (id. at 382-384), as well as the changing analyses of both hair and carpet fibers recovered from the body. Id. at 385-388. The filing addresses the absence of the bullet in the park (id. at 380-381), the absence of fingerprints on the gun, suicide note, car or its contents (id. at 391-392), as well the existence of other forensic anomalies. Id. at 382, 383, 388, 389, 393. And, the filing shows the evidence of state of mind is contradictory and unsuitable to serve as the basis for the defendant's psychological autopsy. Id. at 417-439. The filing details much of the 42 U.S.C. § 1985(2) violation that he Knowlton suffered, which began the day the defendant served him the secret grand jury subpoena. Id. at 304-354. The filing shows that the initial investigation was a joint Park Police/FBI probe (id. at 441-451) and that Congress never investigated the death (id. at 458-460) -- the FBI is almost the only entity that has investigated the case, three times in all. Id. at 441-460.

[39] Psychiatric Report of Dr. Thomas C. Goldman, M.D., APNDX 1 at 107:

> [S]pecific purpose of advising you on matters relating to his credibility with regard to his reports of attempts to harass him as a potential witness before the Whitewater Grand Jury last October... report of systematic harassment occurring on the streets around Mr. Knowlton's home beginning on the evening of Thursday, Oct. 26, 1995... over two dozen instances occurred of male individuals making unusual contact with him, including staring at him intently as he walked or stood on the street, following him, brushing his shoulder in passing when there was ample room on the sidewalk to avoid him, and in at least one case pointing a finger at him in a way that suggested a gun shooting...
>
> Listening to his narrative, a clear picture developed of the course of events. Kathy had been the first person to notice that a man was looking at him strangely (on Thursday evening). He began to make similar observations and describes going through a normal series of thought processes including initial puzzlement about what could be happening and a partial wish to avoid eye contact with the men and to deny that anything unusual or frightening was happening until it was impossible the

D. The grand jury is a pre-constitutional institution and Petitioner is entitled to relief under applicable pre-constitutional law

. The evidence herein is exculpatory but, unlike In re Grand Jury 89-2 and most other cases discussing the same relief, not Brady material, because Petitioner has no criminal exposure. This circumstance of the FBI's and OIC's having targeted Knowlton illegally,

The proffered evidence exculpates Knowlton from being publicly known as mentally unbalanced.[40] Over the past five years, he has sought relief from every authority there is, and pursued

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denial. He did not initially connect the events with the fact of his being a witness...

And see Polygraph Examination Report of Paul K. Minor, APNDX 1 at 100: "no deception indicated."

[40] See Amend. Complaint ¶ 170, APNDX 1 at 82-83:

Michael Isikoff... Weekly Standard Magazine... "Evans-Pritchards' work, such as it is, consists of... wild flights of conspiratorial fancy coupled with outrageous and wholly uncorroborated allegations offered up by his "sources" - largely a collection of oddballs... and borderline psychotics.*** -- here's the key part -- recalls seeing a mysterious "Hispanic-looking" man lingering around the parking lot. No sooner has Evans-Pritchard popped this bombshell in the *Telegraph* than, Knowlton reports, menacing-looking men in business suits begin following him and staring really hard at him... *** designed to discredit critics of the Clinton White House by making them look like a bunch of blithering idiots. *** The next day, November 25, 1997 another book review, entitled *Conspiracy Central*, authored by Jacob Cohen, appeared in the widely circulated National Review Magazine. In it, Cohen wrote: "He insists that a very sinister-looking man was hovering around the parking lot and may have monitored his peeing... Knowlton seems to have a penchant for seeing the sinister in the glances of those he meets... Mysterious cars follow him, he says. Carefully organized teams of men constantly pass him and his girlfriend on the streets, giving them very menacing stares... Apparently, they are present during every walk Knowlton takes, so that any experimental stroll will reveal them."

every avenue, to try and clear his name. [REDACTED
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request but held that the district court's supervisory powers included, in extraordinary circumstances,

> The narrow question presented -- whether the Court should compel the government to disclose the ITC Report to the grand jury -- raises broader, more fundamental issues concerning the existence and scope of the courts' supervisory powers over grand juries and their functions. Courts, it seems clear, have such supervisory powers. But these supervisory powers are limited, not plenary in nature. They are limited because grand juries are necessarily clothed with a measure of independence and because the Executive Branch, through its prosecutors, properly enjoys certain grand jury prerogatives. Absent the ability to act "independently of a judge," grand juries could not fulfill their dual roles of accusing those who may be guilty and clearing the innocent... But grand juries may exceed the bounds of their independence and **prosecutors may abuse their prerogatives. These possibilities give rise to the courts' grand jury supervisory powers, including the power, in**

(emphasis supplied, citations omitted)

The In re Grand Jury 89-2 (id.) court recognized that the grand jury is a pre-constitutional institution, as did United States v. Pabian, 704 F.2d 1532 (1983), where the court observed that the grand jury is not relegated by the Constitution to a position within any three branches of the government.[41]

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[41] Pabian, id. at 1536: We agree with the ninth circuit's statement in United States v. Chanen that the "tradition and the dynamics of the constitutional scheme of separation of power define a limited function for both court and prosecutor in their dealings with the grand jury." 549 F.2d 1306,

E. Exceptional circumstances of egregious grand jury abuse requires the exercise of this Court's discretionary powers

(1) Petitioner's conspiracy evidence is clear and convincing

review." "As such, whatever use the Report may have, it cannot carry the burden movants place on it. Its contents provide no 'compelling reason' for this Court to interfere with the grand jury process." (Id., citation omitted). This case is clear, unlike In re Grand Jury 89-2, where the evidence's proponent could "not carry the burden [he] place[d] on it." Petitioner's materials exceed his burden. The exhibits prove by clear and convincing evidence:

(1) The existence of an illegal conspiracy to cover up the facts of Mr. Foster's death;
(2) The OIC's participation in that conspiracy; and
(3) A subsidiary conspiracy directed against him in connection with his appearance before the OIC's grand jury.

(2) Concealing earlier grand jury testimony from the new panel

The court in United States v. Pabian 704 F.2d 1532, 1539-1540 (1983) listed the factors it considered in gauging whether the

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1312 (9th Cir.), cert denied, 434 U.S. 825, 98 S.Ct.72, 54 L.Ed 2d 83 (1977) (emphasis in original). The Chanen court reasoned:

> ...[U]nder the constitutional scheme, the grand jury is not and should not be captive to any of the three branches. **The grand jury is a preconstitutional institution, given constitutional stature by the Fifth Amendment but not relegated by the Constitution to a position within any three branches of the government.** Id. at 1213

(citations omitted; emphasis added).

government's conduct was flagrant or abusive; whether (1) "[t]he second grand jury was told about the history and outcome of the earlier grand jury investigation;" (2) "grand jurors were instructed that they could call whatever witnesses they chose" and (3) jurors were told of the right to "review transcripts of persons the prosecutors were not planning to call as witnesses."

(3) Further grand jury abuse of Petitioner before the panel

Knowlton's treatment by Associate Independent Counsel and Deputy Independent Counsel was outrageous, culminating in the "genitals" question -- particularly so on the heals of Knowlton's having suffered a cruel form of witness tampering. The court in United States v. Pabian held that in some circumstances the "federal courts have supervisory power over the administration of justice to regulate the manner in which grand jury investigations are conducted," but ruled that, because, among other things, "[n]o improper or harassing questions were asked... [t]he conduct in this case does not approach the flagrant or abusive conduct that has lead courts to exercise their supervisory power."

F. Exceptional circumstances of due process violation and miscarriage of justice [REDACTED]

The OIC's abuse works a due process violation as well as an injustice, extraordinary circumstances empowering this Court to act and afford fairness to the process, and to remedy this state of affairs. [

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"The preservation of the historic independence of the jury . . . requires that such supervisory power be exercised only when failure to so will effect a deprivation of due process or result in a miscarriage of justice." People v. Sears, 49 Ill.2d 14, 273 N.E.2d 380, 389 (1971). In re Grand Jury 89-2, id. at 1273-74:

In sum, then, this Court's grand jury supervisory powers include the power, in extraordinary circumstances, to direct

this power should be exercised only when the failure to do so would result in a clear deprivation of due process or a manifest miscarriage of justice. The question, then, is whether the case at bar presents the extraordinary circumstances that fit this stringent test.

G. OIC operates under a conflict and defeats the purposes of our Ethic in Government Act

The proffer inculpates the OIC in criminal wrongdoing. This Court has some power to take remedial measures against perverse employment of the grand jury's great authority. The court In re Grand Jury 89-2 at 1275 noted the absence of the existence of a conflict of interest in that case which, the court observed, would be "sufficient by itself" to justify the relief sought. The OIC's abuse of its grand jury's powers in this instance includes the withholding from the panel evidence of its own wrongdoing, gathered by its previous panel.

Of all of the OIC's various investigations, the one in which the necessity of maintaining independence from the Justice Department is the most obvious is his probe of Mr. Foster's death. Before the Act's reenactment in August of 1994, the only substantive investigations into Mr. Foster's death, including the first probe, were conducted by the FBI. Yet, the OIC chose to use FBI agents and the FBI Lab to investigate the death. The use of a federal investigative agency to investigate a case that it had twice closed as a simple suicide presents an obvious conflict of interest and defeats the purpose of the Ethics in Government Act. Congress cautioned against this type of conflict:

Because independent counsels are appointed to handle politically sensitive investigations for the primary purpose of avoiding any appearance of partiality or bias, it is particularly

important that they and their investigations be above any suspicion or allegation regarding conflict of interest.[42]

H. Exceptional circumstances of the failures of our separate branches of government and press [REDACTED]

Petitioner shows that adequate relief cannot be obtained in any other form or from any other Court because of alarming failures of our government:

- *Grand jury abuse.* Transplanted from England, the Founders saw this people's panel a bulwark for the individual against arbitrary or malevolent prosecutors.

- *Executive branch.* The Ethics in Government Act, designed to ensure confidence in the integrity of our government by providing investigations independent of those being investigated, was thwarted by the OIC's use of the FBI – a federal investigative agency that it had twice previously closed the case as a simple suicide.

- *Legislative branch.* The 1994 Senate Banking Committee was the only Committee that claimed to have looked into the death, but its limited investigative jurisdiction precluded it from investigating the facts of the death. And Congress failed to reenact the Independent Counsel law, relegating the task regulatory independent counsels.

- *Press.* The press has acted mostly as a conduit for the official announcements and conclusions of the executive branch, like a public relations department.

Knowlton respectfully asks that this Court act as did the district court [

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[42] Act of Dec. 15th 1987, Pub. L. No. 100-191, 1987 U.S.C.C.A.N. (101 Stat. 1293) p. 2172.

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Conclusion

The government's conduct in this matter undermines the sanctity and integrity of the federal court process, as well as the goals of the Ethics in Government Act,[43] a law that is in sui generis. 28 U.S.C. § 593 (b)(3), *Scope of prosecutorial jurisdiction*, specifically gives the OIC jurisdiction over the crime perpetrated against Petitioner, "intimidation of witnesses." As a matter of law, the OIC's investigative jurisdiction over Mr. Foster's death is still open, and exclusive. But, according to Independent Counsel Robert Ray's September 20, 2000, press release, he intends to file a "final report" promptly after October 27, 2000.

> Finally, the remaining matters within this Office's Madison/Whitewater jurisdiction include pending appeals and the continuing investigation of the White House's failure to search and produce relevant records, including electronic mail, to this and other investigations. Former Arkansas Governor Jim Guy Tucker's second appeal of his conviction for conspiracy and mail fraud has been pending before the Eighth Circuit since oral argument on September 13, 1999. Governor Tucker's sentence of restitution for one million

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[43] The objects of 28 U.S.C. §§ 591-599 (1994) (As Amended) are to ensure that(1) Justice is done; (2) Justice appears to have been done; (3) Those named in a Report are afforded a measure of fairness; (4) Reports are full and complete; and (5) The Independent Counsel is accountable.

> dollars on his tax fraud conspiracy conviction was remanded to the Eastern District of Arkansas for resentencing, which is scheduled for October 27, 2000. Once these matters are concluded, this Office intends to file a final report promptly.

If Mr. Ray really meant the OIC's "final report" under the Act, and not an interim report, then, in the absence of this Court's action, the matter will be moot. The timetable for the dissolution of the OIC, and its grand jury's loss of jurisdiction into the death probe, does not permit Petitioner time to litigate this matter in the US Court of Appeals and thereafter before this Court.

Knowlton called the police to report what he had witnessed, consistent with his understanding as a good citizen. He was drawn into an illegal conspiracy, and, to try and salvage his reputation, he is still embroiled in it. His materials prove the existence of the ongoing criminal conspiracy, the OIC's participation in it, and his having suffered a cruel form of witness tampering, in furtherance of that conspiracy. Petitioner's reputation for mental stability and veracity was destroyed by the OIC's participation in the illegal conspiracy and its resultant illegal grand jury witness tampering. He has met his burden of proving extraordinary circumstances [

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Transplanted from England, and frequently referred to as the people's panel, the grand jury was valued as a kind of people's watchdog, as when in 1743 it twice refused to indict newspaper publisher John Peter Zenger for criminal libel for criticizing New York's colonial governor. When relations between the American colonies and Great Britain grew increasingly tense, grand juries became a means of protesting abuses by the crown's emissaries. The Founders saw the grand jury as a bulwark for the individual against arbitrary or malevolent prosecutors.

Post-constitutional courts continued this recognition of the grand jury's being independent from the sovereign, or executive. A century after the Constitution's ratification, the court in In re Miller, 17 Fed. Cas. 295 (No. 9,552) (C.C.D. Ind., 1878), instructed the panel that it was free to ignore the orders of President Hayes to the

prosecutor that the grand jury limit its probe. "The moment the Executive is allowed to control the action of the courts in the administration of criminal justice their independence is gone."[44]

Although today the grand jury is more of a prosecutor's panel, it is still a pre-constitutional institution, and is still a people's panel, not captive or relegated by the Constitution to a position within any branches. And it still serves as a vehicle for effective citizen participation in government.

failed in this instance. Knowlton simply attempted to tell the truth and to be a responsible citizen.[45] Now, he is manifestly unable to obtain relief from the executive and legislative branches, the news media, as well as his local police. [

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The law is that extraordinary circumstance [

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[44] See Charge to Grand Jury, 30 Fed Cas. 980 (Chase, 263) (1868):

You must not be satisfied by acting upon such cases only as may be brought before you by the district attorney, or by members of your body to whom knowledge of particular offences may have come. Your authority and your duty go much further. You may and you should, summon before you, officers of the government, and others whom you may have reason to believe possess information proper for your action, and examine them fully.

[45] Psychiatric Report of Dr. Thomas C. Goldman, M.D., APNDX 1 at 107:

In conclusion, Mr. Knowlton appears to be a man without any previous significant mental disorder, who has been subjected to a traumatic set of events beginning with the chance occurrence of his having been in Ft. Marcy park on a summer day and having made certain observations and reported upon them consistent with his normal conception of his duty as a citizen... The stress appears to come from two related sources: one, **the sense of physical danger naturally engendered by the harassment described; and, two by the experience of being treated by recognized authority figures with mistrust and suspicion and attempts to discount or discredit him, in response to his attempts to tell the truth and to be a responsible citizen.**

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This matter is a lesson on the need for an Independent Counsel law calling for an OIC that is truly independent of the Department of Justice. Moreover, America has a right to the opportunity to examine whether Madison's vision of our Constitution's separation of powers serving as an "auxiliary precaution" is failing. This case and the relief herein proposed concerns fundamental rights and paramount questions of public policy.

WHEREFORE, Petitioner Patrick James Knowlton respectfully prays [

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Respectfully submitted,

/S/

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